UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTER FOR CONSTITUTIONAL RIGHTS, TINA M. FOSTER, GITANJALI S. GUTIERREZ, SEEMA AHMAD, MARIA LAHOOD, RACHEL MEEROPOL, Plaintiffs, v. GEORGE W. BUSH, President of the United States; NATIONAL SECURITY AGENCY, LTG Keith B. Alexander, Director; DEFENSE INTELLIGENCE AGENCY, LTG Michael D. Maples, Director; CENTRAL INTELLIGENCE AGENCY, Michael V. Hayden, Director; DEPARTMENT OF HOMELAND SECURITY, Michael Chertoff, Secretary; FEDERAL BUREAU OF INVESTIGATION, Robert S. Mueller III, Director; JOHN D. NEGROPONTE, Director of National Intelligence, Defendants.	Case No. 06-cv-313 Judge Gerard E. Lynch Magistrate Judge Kevin N. Fox **AFFIRMATION OF RACHEL MEEROPOL**

I, Rachel Meeropol, an attorney admitted to practice before this Court, and the Courts of the State of New York, hereby affirm under penalty of perjury as follows:

1. I represent the plaintiffs in *Turkmen v. Ashcroft*, 02 CV 2307 (JG)(SMG) (E.D.N.Y.), a civil action on behalf of a number of Muslim non-citizens of Arab or South Asian national origin detained shortly after 9/11, ostensibly on immigration grounds; labeled “of interest” to the 9/11 terrorism investigation; and subjected to brutal and unlawfully prolonged

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detention so that they could be investigated for links to terrorism before being returned to their home countries. All of them currently live overseas. Plaintiffs are moving for class certification and CCR is attempting to identify additional class members. Given the United States' identification of these plaintiffs as "of interest" to the 9/11 investigation, I believe that they fall within the criteria for the NSA Surveillance Program set forth by various administration officials.

2. I need to communicate with the named plaintiffs in *Turkmen* about everything from mundane matters to key facts and tactical decisions in their cases, and have an ethical obligation to keep them apprised of changes in our litigation strategy.

3. My work on these cases and other matters in development requires that I communicate with individuals in Pakistan, the Middle East and other places outside of the United States, including witnesses and other potential sources of information located outside the U.S. I must communicate confidentially with these individuals in order to protect information subject to the attorney-client and work-product privileges. The telephone and email have been the most efficient ways of carrying out these communications. Email is particularly useful given the fact that many of these individuals live many time zones away from the United States.

4. Prior to the government's acknowledgment of the so-called "Terrorist Surveillance Program," I understood that all authorized means of government electronic surveillance involved judicial review. The fact that the TSP dispenses with any judicial review and is effectively unbounded in terms of its scope and lack of procedural safeguards has forced me to reevaluate my communications practices. I have also since learned that the administration has acknowledged that attorney-client communications are not outside the scope of the Program.

5. As a result, with respect to my electronic communications with our clients in the *Turkmen* case, I now feel that I have to be very cautious in what I can say to them using these means of communication.

6. There are a number of issues which I feel I cannot safely or ethically discuss via phone or email with our clients in *Turkmen* and other persons who call or email from overseas to discuss legal matters. These include questions about the facts supporting their claims to discussions of legal strategy and litigation tactics, including explanations of legal decisions and other developments in the case.

7. Around the time the Program was first acknowledged and our lawsuit filed, I informed some of the more distant plaintiffs by phone about the existence of the program and the need to take precautions in communicating by phone or email. For others I conveyed the same warnings to them when I first saw them in person while abroad.

8. Unfortunately, some conversations with the *Turkmen* plaintiffs have been deferred until we can meet in person, because of the financial burdens and the demands on my time that such travel would involve. (We are sharing the burden of current litigation expenses with our co-counsel, a private law firm.)

9. The very fact that we have to defer some such conversations until in-person meetings is problematic given our professional responsibilities to keep these clients informed of the progress and course of their cases.

10. One particular example of how the inability to safely use the telephone has interfered with the way I would have preferred to fulfill my responsibilities to one of the *Turkmen* plaintiffs is as follows: I have had to defer speaking about an issue with one of my

clients until meeting with him in the days prior to his deposition. It would have been far preferable if I could have spoken to this client earlier, by telephone.

11. I have also occasionally resorted to the expedient of communicating by physical delivery of messages, usually by courier in sealed envelopes with my signature across the seal, so that if such a message is intercepted, we may at least have some physical evidence of that fact. This is quite an expensive method of communication for clients in places such as Pakistan or Reunion Island. It is also much slower than the electronic means I now know to be compromised by the NSA program. Use of the mails is also unsatisfactory for other reasons: it does not readily accommodate back-and-forth questioning and counseling that is crucial to creating a sense of understanding and trust in any attorney-client relationship, nor does it allow one to probe a client's (or witness') memory or refresh their recollection with effective follow-up questions. In many ways the difference between a phone call and a letter to my clients is the equivalent of the difference between a conventional deposition and a deposition by written questions; every practicing lawyer will understand why the latter is generally a far less satisfactory method to elicit information than the former.

12. I have solicited advice from experts about methods of electronic communication that might allow us to avoid surveillance in our international communications. We have not yet been able to make arrangements that I would consider secure enough to allow for the discussion of privileged or sensitive matters by phone or email.

13. I have received a copy of the memorandum dated February 11, 2006 from CCR's legal director William Goodman described in ¶ 16 of his Affirmation. I have taken measures to comply with the requirements of the memo, including spending a considerable amount of time

thinking about my communications history with one of our clients in relation to possible NSA surveillance.

14. Plaintiffs' counsel in *Turkmen*, along with co-counsel in a related case, moved the Court for disclosure of whether privileged communications have been subject to surveillance under the Program. After weeks of negotiations, briefing, and argument, the magistrate in that case compelled the government to reveal whether members of its trial team or likely witnesses are "aware of any monitoring or surveillance of communications between any of the plaintiffs or their attorneys." *See Turkmen v. Ashcroft*, No. 02-CV-2307, 2006 U.S. Dist. LEXIS 40675 (E.D.N.Y. May 30, 2006) at *25. The government has not disclosed the information, and has sought review before the district court, necessitating still further efforts on our part.

15. I have spent over 60 hours on this particular surveillance issue in *Turkmen* since March. The work has involved researching, drafting and editing six letters to the Magistrate Judge, and the issue has been a topic of argument at three separate status conferences. I expect that the briefing and argument before the District Judge will require at least 30 additional hours this summer. Other lawyers at the Center have spent time on the issue as well.

16. The *Turkmen* case has been widely publicized internationally. As a result, potential class members frequently contact me by email or telephone to inquire about the status of the case and about their potential claims. I am no longer able to engage in detailed conversations about the case with these individuals by phone or email. Because these individuals do not know me personally, and have not had the opportunity to build up a relationship of trust with me the way our named plaintiffs have over the years, it is particularly difficult to inform them during our first conversations of the fact that their conversations with me may be subject to surveillance by the NSA. I fear that disclosing this risk to them immediately will make both

myself and the Center appear suspect to these individuals. In order to accommodate both this concern and the risk that a new potential client may say something compromising to his case, I have decided that it is best to avoid having detailed, substantive conversations over the phone or by email with potential class members about their individual claims, or about incidents involving other plaintiffs or potential class members they may have witnessed while in detention. (The *Turkmen* case involves conditions-of-confinement claims, and the plaintiffs and potential class members were all housed in the same two detention facilities.)

17. On at least one occasion, a potential class member has asked me to refrain from communicating with him by telephone or email due to his fears of surveillance pursuant to the NSA Program.

18. The existence of the NSA program has placed the legal staff at the Center in an impossible situation. It is extremely difficult to balance the competing ethical obligations of confidence and zealous representation. Moreover, I personally find it frightening and outrageous that my communications as an attorney are subject to interception without any judicial oversight to enforce the safeguards of the Fourth Amendment and the protections created by Congress.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Rachel Meeropol, Esq.

Dated: June 30, 2006